

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BISOUS BISOUS LLC,

Plaintiffs,

v.

THE CLE GROUP, LLC, *et al.*,

Defendants.

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C.A. No. 3:21-cv-01614-B

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE

Defendants file this Response in opposition to Plaintiff Bisous Bisous LLC's (hereinafter, "the Bakery") Motion for Leave to Supplement the Appendix to Its Application for a Temporary Restraining Order and Motion for a Preliminary Injunction and Brief in Support.

The Bakery's proposed supplementations include inadmissible hearsay,¹ which fail to provide relevant evidence of actual confusion.² Thus, the Bakery's motion should be denied.

In particular, the Bakery is seeking the extraordinary relief of asking this Court to shutdown Dallas's newest 10,000 square foot "Dining Hot Spot" based upon hearsay statements. But "[h]earsay is not admissible." FED. R. EVID. 802. Ironically, none of the hearsay statements the Bakery seeks leave to submit even shows a single customer actually purchased Defendants' products while thinking that he or she was purchasing one of the Bakery's products. That is, after all, the *sine qua non* of Trademark Law. *See NFL Props. v. Playoff Corp.*, 808 F. Supp. 1288, at 1291 (N.D. Tex. 1992). More egregiously, the Bakery seeks this extraordinary relief even though

¹ Defendants are filing contemporaneously their evidentiary objections to the supplementations.

² *See* Ex. A, e-mail chain between parties' counsel, asking for relevance of supplementations, to which Plaintiff's counsel had no response, App. 02 – App. 03.

Defendants' advertise that "Bisou and Clé Group are in no way affiliated with or sponsored by Bisous Bisous Patisserie." See Exs. B & C, website and Facebook pages for Dallas's Newest Social Dining Hotspot, App. 06 & App. 14 – App. 15.

For all the above reasons, Defendants respectfully request that this Court deny the Bakery's motion in full.

Dated: August 9, 2021

Respectfully submitted,

BUETHER JOE & COUNSELORS, LLC

By: /s/ Kenneth P. Kula

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5.1(d) on this 9th day of August, 2021.

/s/ Kenneth P. Kula

Kenneth P. Kula